

1 HONORABLE TIFFANY M. CARTWRIGHT  
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7 UNITED STATES DISTRICT COURT  
8 FOR THE WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 BRAD ERHART,

11 Plaintiff,

12 v.

13 TRINET HR XI, INC., SWITCHBOARD  
14 TECHNOLOGY LABS, INC., AND  
15 HARTFORD LIFE AND ACCIDENT  
16 INSURANCE COMPANY, INC.,

Defendants.

Case No. 3:23-cv-5882-TMC

**DECLARATION OF CHRIS HERMIDA  
IN SUPPORT OF DEFENDANT  
SWITCHBOARD TECHNOLOGY LABS,  
INC.'S MOTION TO COMPEL  
ARBITRATION**

I, Chris Hermida, hereby declare:

1. I am over the age of 18 and am competent to testify to the following facts.
2. I am the co-founder and CEO of Defendant Switchboard Technology Labs, Inc.

(“Switchboard”).

3. Plaintiff Brad Erhart is a former employee of Switchboard. In August 2021, Switchboard offered Plaintiff a job as a Senior DevOps Engineer working remotely from Washington. Attached as **Exhibit A** is a true and correct copy of Plaintiff's offer letter, which he signed on August 23, 2021.

25  
26 DECLARATION OF CHRIS HERMIDA IN SUPPORT OF  
DEFENDANT SWITCHBOARD TECHNOLOGY LABS,  
INC.'S MOTION TO COMPEL ARBITRATION - 1

Case No. 3:23-cv-5882-TMC

SUMMIT LAW GROUP, PLLC  
315 FIFTH AVENUE SOUTH, SUITE 1000  
SEATTLE, WASHINGTON 98104-2682  
Telephone: (206) 676-7000  
Fax: (206) 676-7001

4. On August 19, 2021, I emailed Erhart attaching copies of the TriNet Terms and Conditions Agreement and Switchboard's employee handbook. Attached as **Exhibit B** is a true and correct copy of my email and Erhart's response.

5. Attached as **Exhibit C** is a true and correct copy of the TriNet Terms and Conditions Agreement (TCA).

I hereby certify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Signed this 1<sup>st</sup> day of December 2023.

Christopher Hermida

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Chris Hermida

**DECLARATION OF CHRIS HERMIDA IN SUPPORT OF  
DEFENDANT SWITCHBOARD TECHNOLOGY LABS,  
INC.'S MOTION TO COMPEL ARBITRATION - 2**

Case No. 3:23-cv-5882-TMC

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the USDC, Western District of Washington, using the CM/ECF system which will send notification of such filing to the following:

*Plaintiff Pro Se*

Brad Erhart  
300 SE 184th Avenue, Apartment 101  
Vancouver, WA 98683  
Email: [china\\_nanomaterial@leo.spacejunk.dev](mailto:china_nanomaterial@leo.spacejunk.dev)

*Attorneys for Defendant Hartford Life and Accident Ins. Co., Inc.*

Sarah E Swale  
JENSEN MORSE BAKER PLLC  
1809 7th Avenue, Suite 410  
Seattle, WA 98101  
Email: [sarah.swale@jmblawyers.com](mailto:sarah.swale@jmblawyers.com)

*Attorneys for Defendant Trinet HR Xi, Inc.*

Catharine M. Morisset  
Jeremy F. Wood  
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1700 7<sup>th</sup> Avenue, Suite 2200  
Seattle, WA 98101  
Email: [cmorisset@fisherphillips.com](mailto:cmorisset@fisherphillips.com)  
[jwood@fisherphillips.com](mailto:jwood@fisherphillips.com)

DATED THIS 1<sup>st</sup> day of December 2023.

s/ Karen M. Lang  
Karen M. Lang, Legal Assistant  
[karenl@summitlaw.com](mailto:karenl@summitlaw.com)

DECLARATION OF CHRIS HERMIDA IN SUPPORT OF  
DEFENDANT SWITCHBOARD TECHNOLOGY LABS,  
INC.'S MOTION TO COMPEL ARBITRATION - 3

Case No. 3:23-cv-5882-TMC

**SUMMIT LAW GROUP, PLLC**  
315 FIFTH AVENUE SOUTH, SUITE 1000  
SEATTLE, WASHINGTON 98104-2682  
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Fax: (206) 676-7001

# **EXHIBIT A**

**08/23/2021**

**Brad Erhart**

Dear Brad:

We are pleased to present the following offer of employment. This letter will summarize and confirm the details of our offer for you to join **Switchboard Technology Labs, Inc**, in the position of **Senior DevOps Engineer**, at the **Remote** office commencing on **08/31/2021** and reporting to **Mitch Gildenberg**. In this position, you will:

- Own efforts to configure, upgrade and continuously monitor network infrastructure
- Participate in on-call rotations and assist the community with any urgent network issues
- Interface with node operators and community partners to help grow the ecosystem
- Build tooling to collect and analyze network data
- Expand and improve reference node implementations as well as documentation
- Work with team and community on feature design, scoping and implementation

Orientation Information: On your first day of work, you should plan to report to **Mitch Gildenberg** at **11:30 AM EST**. Your new employee orientation meeting is scheduled for **12:30 PM EST** the same day.

Here are the specific details of our offer:

TriNet HR Corporation: This letter and accompanying enclosure will summarize important details of matters pertaining to your employment. Also enclosed is information about current benefits, which are provided to the workforce here at **Switchboard Technology Labs, Inc**. Our benefits, payroll, and other human resource management services are provided through TriNet HR Corporation, a professional employer organization. As a result of **Switchboard Technology Labs, Inc**'s arrangement with TriNet, TriNet will be considered your employer of record for these purposes and your managers here at **Switchboard Technology Labs, Inc** will be responsible for directing your work, reviewing your performance, setting your schedule, and otherwise directing your work at **Switchboard Technology Labs, Inc**.

Base Compensation: Your base compensation will be **REDACTED** annually, less payroll deductions and required taxes and withholdings, and will be paid **bi-weekly**. This is an exempt position and you are expected to work during the core hours of **8:30 AM to 5:30 PM**, Monday through Friday as well as those hours necessary to get the job done.

Based on your start date of **08/31/2021**, your first opportunity for a review of your compensation will be **03/01/2022**.

Equity Grant: Subject to the approval of the Company's Board of Directors, you will be granted an option to purchase **REDACT** shares of the Company's common stock. The option will be subject to the terms and conditions applicable to options granted under the Company's Equity Incentive Plan, as described in that plan and the applicable Stock Option Grant Agreement, which you will be required to sign. You will vest **REDACT** of the shares on the 12-month anniversary of your vesting commencement date and **REDACTE** of the remaining shares will vest in monthly installments thereafter during continuous service, as described in the applicable stock option agreement. The exercise price per share will be equal to the fair market value per share on the date the option is granted, as determined by the Company's Board of Directors in good faith compliance with applicable guidance in order to avoid having the option be treated as deferred compensation under Section 409A of the Internal Revenue Code of 1986, as amended. There is no guarantee that the Internal Revenue Service will agree with this value. You should consult with your own

tax advisor concerning the tax risks associated with accepting an option to purchase the Company's common stock.

**Benefits:** **Switchboard Technology Labs, Inc**, through TriNet, offers a full range of benefits for you and your qualified dependents as outlined in the attached Summary of Benefits. A presentation of our benefits program will be given to you during your first week of employment. Information about these benefits is included with this letter, and additional information will be available on-line on the terms and conditions included in the Terms and Conditions Agreement (TCA) each new employee must accept in order to access TriNet's on-line self-service portal, TriNet Passport.

This offer of employment is contingent upon you fulfilling each of the following terms:

**Acknowledgement of Company Handbook and Confidentiality Agreement:** As a **Switchboard Technology Labs, Inc.** employee, you are required to follow its rules and regulations. Therefore you will be asked to acknowledge in writing that you have read the **Switchboard Technology Labs, Inc** employee handbook(s) **and sign and comply with the attached Employee Non-Disclosure and Invention Assignment Agreement (the "Proprietary Information Agreement"), which prohibits, among other things, the unauthorized use or disclosure of Switchboard Technology Labs, Inc's confidential and proprietary information.** In order to retain necessary flexibility in the administration of its policies and procedures, **Switchboard Technology Labs, Inc** reserves the right to change or revise its policies, procedures, and benefits at any time.

**Required Documentation:** To comply with the government-mandated confirmation of employment eligibility, please review the enclosed I-9 Form and "Lists of Acceptable Documents" as approved by the United States Department of Justice for establishing identity and employment eligibility. Please bring the required I-9 documents with you on your first day of employment; failure to submit proof of your employment eligibility will postpone your start date or result in termination of your employment. **Also enclosed are additional new hire forms that you should complete and bring with you on your first day of work.**

**At Will Employment:** Please understand, as stated in all job offers, **Switchboard Technology Labs Inc** is an employment-at-will company. That means that you or the Company may terminate your employment at any time, with or without cause and with or without prior notice.

**Severance:** Except if terminated with cause (as defined below) or the employee resigns, the company will provide the employee with 30 days prior notice **or** 1 month severance incase of termination. "Cause" shall mean (i) the employee's dishonest statements or acts with respect to the Company or the Group, or any current or prospective customers, suppliers vendors or other third parties with which such entity does business; (ii) the employee's commission of (A) a felony or (B) any misdemeanor involving moral turpitude, deceit, dishonesty or fraud; (iii) the employee's failure to perform his assigned duties and responsibilities to the reasonable satisfaction of the Company which failure continues, in the reasonable judgment of the Company, after written notice given to the employee by the Company; (iv) the employee's gross negligence, willful misconduct or insubordination with respect to the Company or any Affiliate of the Company; or (v) the employee's material violation of any provision of any agreement(s) between the employee and the Company relating to noncompetition, non solicitation, nondisclosure and/or assignment of inventions.

This offer letter, together with the TCA **and your Employee Non-Disclosure and Invention Assignment Agreement**, forms the complete and exclusive agreement as to your employment with **Switchboard Technology Labs, Inc.** It supersedes any other agreements or promises made to you by anyone, whether oral or written, regarding your employment with **Switchboard Technology Labs, Inc..** Changes to the terms of this letter require a written modification signed by an authorized

employee of **Switchboard Technology Labs, Inc.** Additionally, **Switchboard Technology Labs, Inc** reserves the right to revoke this offer should it not receive a satisfactory reference check for you.

If you wish to accept employment at **Switchboard Technology Labs, Inc** under the terms described above, **please sign and date this letter and the Employee Non-Disclosure and Invention Assignment Agreement and return them to your supervisor at Switchboard Technology Labs, Inc by 08/25/2021.** Please retain copies for your records.

**Brad**, we are excited that you are joining **Switchboard Technology Labs, Inc's** team and feel that you have a great deal to contribute. If you have any questions, please feel free to call **Chris Hermida** at [REDACTED]

Sincerely,

**Chris Hermida**  
**Co-founder & CEO**

I understand and accept the terms of this employment offer.

*Brad Erhart*

**Brad Erhart**

08/23/2021

Date

08/31/2021

Start Date

cc: [REDACTED]

Enclosures: Employee Non-Disclosure and Invention Assignment Agreement  
I-9 Form and "Lists of Acceptable Documents"  
Summary of Benefits

# **EXHIBIT B**

 Chris Hermida **REDACTED** Aug 19, 2021, 6:10 PM     
to BE ▾

Hey Brad,

Just want to follow up and let you know we're working on the updated offer letter containing a modified 30 day provision we had discussed. Hope to have it for you tomorrow.

In response to some of your questions/concerns

A) I'd like to let you know that we will be covering 100% of premiums for spouse/partner as well as children/dependents as part of our healthcare plan at least for the remainder of the calendar year. That may change in the future though as of this second we have no intention of modifying that.

B) As requested I've attached copies of TriNet's terms and the employee [handbook](#). We are unable to provide a copy of our contract with TriNet, however happy to provide a certificate of coverage from the insurance side or connect you with our TriNet account executive if that would alleviate any of your concerns.

C) Our current vacation policy is unlimited vacation subject to prior manager approval and reasonableness.

We're looking forward to having you onboard!

Chris  
\*\*\*

**2 Attachments • Scanned by Gmail**  

 

 BE **REDACTED** Aug 20, 2021, 3:47AM     
to me ▾

Chris,

Thanks for the update. Looking forward to getting the updated offer letter and onboarding soon.

\*\*\*

# **EXHIBIT C**

## **TRINET TERMS AND CONDITIONS AGREEMENT (TCA)**

PLEASE READ THIS TCA CAREFULLY. IT CONTAINS IMPORTANT INFORMATION REGARDING YOUR EMPLOYMENT RELATIONSHIP WITH TRINET, YOUR USE OF THE TRINET PLATFORM AND ONLINE SERVICES, AND THE HANDLING OF ANY DISPUTES ARISING OUT OF YOUR RELATIONSHIP WITH TRINET, YOUR COMPANY, AND RELATED MATTERS.

**This TCA contains the following sections:**

**1. Co-Employment vs. Standard Employment**

**2. The TriNet Platform- Use, Information Accuracy, And Electronic Delivery**

**3. TriNet Payroll Services**

**4. TriNet Benefits**

**5. TriNet Employee Handbook, Additional Policies, And State Notices**

**6. At-Will Relationship**

**7. Confirmation Of Roles**

**8. Dispute Resolution Protocol ("DRP") and Mandatory Arbitration of Claims**

**a. How The DRP Applies**

**b. Limitations On How The DRP Applies**

**c. Starting Arbitration**

**d. How Arbitration Proceedings Are Conducted**

**e. The Arbitration Hearing And Award**

**f. Enforcement Of The DRP**

**9. Acknowledgement**

**1. Co-Employment vs. Standard Employment**

The TriNet family of companies is engaged in the business of providing human resources services through various licensed Professional Employer Organizations ("PEOs"). In this Terms and Conditions Agreement ("TCA"), "TriNet" includes TriNet Group, Inc., and all its direct and indirect subsidiaries (including, but not limited to your TriNet co-employer, as defined below), whether doing business in their own name or otherwise.

Your relationship with TriNet is beginning because the company you work for ("your worksite employer," "your company" or "my company") is a TriNet customer. This means that your company has entered into an agreement with a TriNet PEO company to share certain employer responsibilities as co-employers. This also means that a TriNet PEO company (the company whose name appears on your wage statements, "your TriNet co-employer") will be your employer of record for certain administrative purposes, which may include processing payroll (based on information provided by your worksite employer), sponsoring and administering employee benefits as applicable, and providing certain other human resources services. Your worksite employer will retain the responsibilities of directing your day-to-day work and managing its business affairs. Your worksite employer, not TriNet, has sole responsibility for controlling and providing information about your wages, working hours, and working conditions. You acknowledge and agree that your worksite employer and TriNet are authorized to share information with each other about you and your dependents to provide human resources services.

## **2. TriNet Platform- Use, Information Accuracy, And Electronic Delivery**

You acknowledge and agree that all information submitted by you or your company to TriNet and your licensed use of the TriNet platform ([login.trinet.com](http://login.trinet.com)) is subject to the terms and conditions in this TCA as well as the [TriNet Platform Terms of Use](#) and [TriNet Platform Privacy Policy](#). You will be prompted to review and acknowledge these important policies once you acknowledge this TCA. Thereafter, they will be available for reference on the TriNet platform.

You agree that all information submitted by you to TriNet for employment, payroll, and benefits administration purposes is and will be true and correct to the best of your knowledge, and you understand that any misrepresentation or omission may affect your relationship with TriNet, your employment status with your worksite employer, and certain insurance or benefits provided to you. You authorize TriNet to enroll you in TriNet sponsored employee benefits (if you are an eligible employee under the terms of the plans), and to make changes to your benefits, payroll, and personal information according to the information you submit to TriNet directly or indirectly. Moreover, you agree to provide TriNet an active and functioning email address for you, to review and accept notices and other documents sent to that email address, and to review and accept notices and other documents posted on the TriNet platform.

You hereby agree and consent to electronic delivery by email (or via such other method as permitted by law), of your IRS Form W-2, COBRA notices, and any other notice or form for which consent to electronic delivery is required by law, for the duration of your employment. Further, you agree to make all such documents available to your spouse, domestic partner, and/or dependents, as applicable. Such documents will also be posted and made available on the TriNet platform. Requests for paper copies of such documents may be made to TriNet Connect 360 at 1.800.638.0461 or [Connect360@TriNet.com](mailto:Connect360@TriNet.com). Requests for paper copies are not considered a withdrawal of your consent to receive such documents electronically. (Additional contact information can be found on the TriNet platform.)

If you subsequently withdraw your consent to electronic delivery, you will receive your Form W-2, COBRA notices, and other such mandatory documents in hard copy form at no charge. You may withdraw consent for electronic delivery of Form W-2 (and other electronic notices) by navigating to the Settings menu on the TriNet platform. Your

withdrawal will be confirmed to you by email. If you need assistance making this change, please contact TriNet Connect 360. A withdrawal of this consent does not apply to previously issued Form W-2s.

### **3. TriNet Payroll Services**

You understand and agree that:

**(a)** Responsibility for compliance with accurate reporting of hours worked, legally required break periods, overtime, certain time off accrued and taken, and related matters are the responsibility of your company, over which TriNet has no control;

**(b)** TriNet is responsible for processing your pay based on your company's reporting (see above), as directed by your company, and pursuant to the written agreement between your company and TriNet;

**(c)** TriNet does not determine or provide input about your rate of pay, the hours you are scheduled to work or actually work, any legally required break periods, or your exempt/non-exempt status under the law;

**(d)** TriNet's responsibility for your pay is further limited in the following ways:

(i) If TriNet learns that it paid you an amount not authorized by your company, you agree to repay the amount to TriNet and you consent to TriNet reversing such payment, to the full extent permitted by law;

(ii) If your company fails to fund its payroll, TriNet will pay you if required by law and, in that situation, only the minimum amounts required by law based on the information available to it regarding your hours worked. In the event your company fails to fund payroll, any requests for payment of wages should be made to your company; and

(iii) If you believe that your company owes you more than what TriNet remits to you (including payment for time that you have worked, commissions and bonuses, time that you have taken or accrued as sick/vacation/paid time off, time for any other paid leave of absence, and/or amounts in excess of minimum wage), your sole recourse for collection of such unpaid amounts is against your company and not TriNet, and will be the sole liability of your worksite employer.

**(e)** Your worksite employer is solely responsible for reimbursement of any business expenses you may incur.

### **4. TriNet Benefits**

You may be offered certain TriNet-sponsored employee benefits, subject to your company's benefit selections and the terms of the applicable TriNet benefits plan documents. You acknowledge and agree that if you elect to participate in the TriNet cafeteria plan and health and welfare benefits, you must abide by the rules set forth under the applicable plan documents. Unless otherwise required by law, you acknowledge and agree that if you are eligible to elect TriNet benefits but fail to submit a benefits election by the specified deadline, you must wait until the next open enrollment period to elect

new coverage or make changes to your elections, unless you experience a life status change event. Please refer to your applicable TriNet Benefits Guidebook and Summary Plan Description for important details regarding the consequences of failing to make a timely election or waiver of coverage.

You understand that you have access to an electronic copy of your applicable TriNet Benefits Guidebook and Summary Plan Description posted on the TriNet platform, as well as in PDF format that TriNet can email to you upon request, and as a hardcopy that TriNet can mail to you upon request. You agree to read the TriNet Benefits Guidebook carefully as it contains important information regarding the TriNet cafeteria plan and health and welfare benefits.

You understand that, if your company arranges to sponsor a different health plan, you will not be eligible to participate in a health plan sponsored by TriNet. In such case, you also understand and agree that your company may request that TriNet take deductions from your pay for the healthcare premiums associated with your participation in the health plan sponsored by your company. You hereby consent to such deductions, and you understand and agree that they will appear on your pay stub as a deduction amount and will be reported accordingly on your Form W-2.

You also understand and agree that certain information about your TriNet benefits enrollment, including but not limited to plan elections and the amounts of your salary deductions (including, if applicable, salary deferrals for a retirement plan, contributions to a health care flexible spending account, dependent day care flexible spending account, and similar arrangements), may be shared with your worksite employer for the purpose of verifying billing accuracy and/or for any other lawful purpose, and/or if and when your worksite employer ceases to do business with TriNet.

## **5. TriNet Employee Handbook, Additional Policies, And State Notices**

Once you acknowledge this TCA, you will be prompted to review and acknowledge receipt of the TriNet Employee Handbook and other additional policies applicable to your employment as part of your onboarding. Copies can be found on the TriNet platform or by contacting TriNet Connect 360 at 1.800.638.0461 or Connect360@TriNet.com.

You also understand and agree that depending upon your work location, you are entitled to receive certain mandatory **State Notices**. It is your responsibility to read and familiarize yourself with the TriNet Employee Handbook, applicable State Notices and other additional policies, and to ask TriNet for clarification of any of the above item(s) that you may not understand. You may view any applicable State Notices on the TriNet Platform under **Company > Legal Notices > Notices** and selecting the "Required State Notices" document.

## **6. At-Will Relationship**

Unless prohibited by law or expressly provided in a written agreement signed by the Chief Executive Officer and President of TriNet, your relationship with your TriNet co-employer is "at-will," meaning that you and your TriNet co-employer have the right to terminate the relationship at any time, with or without cause, and with or without advance notice.

## **7. Confirmation of Roles**

You understand that the work you perform for your worksite employer is for the direct benefit of your company and not TriNet. You understand that your company, and not TriNet, directs and controls your hiring, compensation, employment duties and responsibilities, work schedule and actual hours worked, performance measurement, and all other terms and conditions of your employment at the worksite.

If you are an officer or partner of your company, you understand that the agreement between your company and TriNet does not relieve you of any legal responsibility you may have to employees of the company, taxing authorities, or TriNet, should your company fail to meet its payroll obligations.

## **8. Dispute Resolution Protocol ("DRP") and Mandatory Arbitration of Claims**

**Subject to and without superseding the specific terms in subsections (a) through (f) below, the DRP expressly requires that arbitration will be used instead of going before a court (for a judge or jury trial) and that NO JURY TRIAL WILL BE PERMITTED (unless applicable law does not allow enforcement of a pre-dispute jury trial waiver in the particular circumstances presented) for any dispute arising out of or relating to your co-employment with TriNet and/or arising out of or relating to your employment with your company, and for any dispute with an employee, officer, or director of TriNet or of a TriNet customer.**

### **(a) How The DRP Applies**

Subject to the limitations in subsection (b), this DRP covers any dispute arising out of or relating to your co-employment with TriNet, including your TriNet co-employer, and/or arising out of or relating to your employment with your company, as well as any dispute with an employee, officer, or director of TriNet or of a TriNet customer (all of whom, in addition to TriNet customers, are intended to be beneficiaries of this DRP) ("covered dispute"), including, but not limited to, all claims whether arising in tort or contract and whether arising under statute or common law including, but not limited to, any claim of breach of contract, discrimination or harassment of any kind. The Federal Arbitration Act ("FAA") applies to this DRP. Any applicable internal procedures at your company or TriNet for resolving disputes (e.g., procedures in the TriNet Employee Handbook for complaining about or addressing complaints about misconduct), as well as the option of mediation, will continue to apply with the goal of resolving disputes before arbitration. This DRP will survive the termination of the employment relationship. **With only the exceptions described below, arbitration will be used instead of going before a court (for a judge or jury trial) and even in the situations described below, NO JURY TRIAL WILL BE PERMITTED (unless applicable law does not allow enforcement of a pre-dispute jury trial waiver in the particular circumstances presented).**

### **(b) Limitations On How The DRP Applies**

The mandatory arbitration requirement of this DRP does not apply to claims for workers' compensation, state disability insurance, or unemployment insurance benefits. It also does not apply to any claims that are legally prohibited from being subject to a pre-dispute mandatory arbitration agreement (e.g., certain claims against federal

contractors). It also does not apply to claims properly made pursuant to a collective bargaining agreement's dispute resolution procedure if you are represented by a union and the dispute resolution procedure in the applicable collective bargaining agreement conflicts with the mandatory arbitration provision of this DRP. The mandatory arbitration requirement also does not prevent a party from bringing complaints, claims, or charges before the Equal Employment Opportunity Commission, the U.S. Department of Labor, the National Labor Relations Board, or the Office of Federal Contract Compliance Program, and does not prevent a party from bringing claims in any forum as provided in Public Laws 111-203, 111-118 and 112-10. Further, claims may be brought before any other administrative agency, provided applicable law permits such claims to be presented to that agency even when a mandatory arbitration agreement such as this DRP exists.

**If at the time of a covered dispute there is an arbitration agreement between you and your company, then to the extent inconsistent with this DRP's mandatory arbitration requirement, this DRP will control. If at the time of a covered dispute there is an agreement between you and your company expressly prohibiting arbitration of covered disputes, then that agreement will be controlling as between you and your company (and its employees, officers, and agents). However, any covered dispute against TriNet (and its employees, officers, and agents) will still be subject to this DRP and mandatory arbitration, unless you and TriNet mutually agree otherwise after the covered dispute has arisen.**

This DRP does not excuse a requirement that a party must exhaust administrative remedies before filing certain claims, with the understanding that after administrative remedies have been exhausted, you must commence arbitration to resolve a covered dispute.

### **(c) Starting Arbitration**

Before commencement of arbitration, the parties may, upon express written agreement of the parties, submit the dispute to mediation on terms and conditions agreeable to all parties. This DRP does not require mediation before commencing arbitration.

Arbitration begins by bringing a claim under the applicable employment arbitration rules and procedures of the Judicial Arbitration and Mediation Services, Inc. ("JAMS") or any other dispute resolution provider agreed to by the parties, as then in effect and as modified by any superseding provisions in this DRP. JAMS' Employment Arbitration Rules may be found on the internet at [www.jamsadr.com](http://www.jamsadr.com) or by using an internet search engine to locate the "JAMS Employment Arbitration Rules." All claims in arbitration must be raised within the same time limits (statutes of limitation) that would apply to a court proceeding. The arbitrator will be selected by mutual agreement of the parties and will be an experienced attorney licensed in the state where the arbitration will be held or a retired judicial officer who served in that state as a judge or another qualified individual. If the parties cannot agree on an arbitrator, the applicable JAMS (or, if agreed to by the parties, another dispute resolution provider's), rules will apply to appoint an arbitrator. The arbitration will be conducted no more than 75 miles from the location where you last regularly worked for your worksite employer, unless the parties agree to another location.

### **(d) How Arbitration Proceedings Are Conducted**

In arbitration, the parties will have the right to file motions challenging the pleadings (e.g., demurrer or motion to dismiss), conduct reasonable and adequate civil discovery, bring dispositive motions (e.g., summary judgment/adjudication), and present witnesses and evidence in support of their cases and defenses. The specific provisions of this DRP and the applicable rules of JAMS (or any other dispute resolution provider agreed to by the parties), will direct the arbitrator in decisions regarding conducting the arbitration. To the extent any applicable arbitration rules are inconsistent with the terms of this DRP, the terms of this DRP will be controlling.

**There will be no right or authority for any dispute to be brought, heard, or arbitrated as a class, collective, representative, or private attorney general action, or as a member in any purported class, collective, representative, or private attorney general proceeding, including, without limitation, uncertified class actions (“Class Action Waiver”); provided, however, that you may opt out of the Class Action Waiver by checking this box  before you acknowledge this TCA below.** Disputes regarding the validity and enforceability of the Class Action Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, representative, or private attorney general action, and (2) a civil court of competent jurisdiction finds all or part of the Class Action Waiver unenforceable, the class, collective, representative, and/or private attorney general action must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration. No employee will be retaliated against, disciplined, or threatened with discipline for exercising his or her rights under Section 7 of the National Labor Relations Act by the filing of or participation in a class, collective, or representative action, but TriNet (and, if applicable, any TriNet customer or employee(s) of either TriNet or a TriNet customer interested in enforcing this DRP for its/their own benefit), retains the right to enforce this DRP and the Class Action Waiver under the Federal Arbitration Act and to seek dismissal of class, collective, or representative actions.

During the arbitration each party will pay their own attorneys' fees, subject to any remedies to which that party may later be entitled under applicable law. In all cases where the law requires it, TriNet (and, if applicable, any TriNet customer or employee(s) of either TriNet or a TriNet customer interested in enforcing this DRP for its/their own benefit), will pay the fees of the arbitrator and the arbitration. In cases in which apportionment of fees for the arbitrator and the arbitration is permitted by applicable law, those fees will be divided between the parties as is required by law and determined by the arbitrator.

#### **(e) The Arbitration Hearing And Award**

Within 30 days after the end of the arbitration hearing, any party may file a written brief by providing copies to the arbitrator and the other parties. The arbitrator may award any remedy warranted under applicable law and will provide a written opinion including reasoned explanations for the decision. The decision of the arbitrator is final and not subject to appeal, except that, to the extent allowed or required by applicable law, the award may be confirmed, corrected, modified, or vacated by a court of competent jurisdiction based on the limited grounds set forth in the FAA, and a court of competent jurisdiction will have the authority to enter judgment based on a final arbitration award.

#### **(f) Enforcement Of The DRP**

Subject to the exceptions provided herein, this DRP is the full and complete agreement for resolution of covered disputes between you and TriNet (and its employees, officers, and agents), and between you and your company (and its employees, officers, and agents). If any portion of this DRP is determined to be unenforceable, the remainder of this DRP will still be enforceable, subject to the specific exception in section (d), above.

## **9. Acknowledgement**

By acknowledging below, I confirm that I have read and understand the contents of this TCA including, but not limited to, **the Dispute Resolution Protocol (“DRP”), which includes my agreement to mandatory arbitration of disputes arising out of or relating to my employment and a waiver of my right to a jury trial (except as specifically provided in the DRP)**. I understand and acknowledge that I have the responsibility to read and familiarize myself with the TCA, the TriNet Employee Handbook, any applicable State Notices, and any additional policies for my company, and I agree to abide by the terms and conditions set forth therein, including but not limited to the DRP. I further understand and acknowledge that I am an at-will employee.

I understand and acknowledge that none of the language in this TCA, the TriNet Employee Handbook or elsewhere is intended to limit the exercise of my rights under Section 7 of the National Labor Relations Act.